

ATTACHMENT 3 – SURVEY AND MANAGE LANGUAGE FOR INCLUSION IN NEPA/DECISION DOCUMENTS

A. Projects that Comply With the 2001 Survey and Manage Record of Decision and Plan Amendment without Subsequent ASRs.

The project is consistent with the 2001 Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines, as incorporated into the District Resource Management Plan.

This project uses the species list and categories from the 2001 ROD. At the time this project was initiated, the BLM was involved in legal proceedings on the *Record of Decision to Remove the Survey and Manage Mitigation Measure Standards and Guidelines from Bureau of Land Management Resource Management Plans Within the Range of the Northern Spotted Owl*. Due to uncertainties surrounding these proceedings, this project utilized the last valid Record of Decision, specifically the 2001 Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines (not including subsequent Annual Species Reviews). Details of the project surveys are described below:

Insert details

B. Projects that Comply with the Pechman Exemptions.

The project is consistent with court orders relating to the Survey and Manage mitigation measure of the Northwest Forest Plan, as incorporated into the District Resource Management Plan.

In 2006, the District Court for the Western District of Washington (Judge Pechman) invalidated the agencies' 2004 RODs eliminating Survey and Manage due to NEPA violations. Following the District Court's 2006 ruling, parties to the litigation entered into a stipulation exempting certain categories of activities from the Survey and Manage standard (hereinafter "Pechman exemptions").

Judge Pechman's Order from October 11, 2006 directs: "Defendants shall not authorize, allow, or permit to continue any logging or other ground-disturbing activities on projects to which the 2004 ROD applied unless such activities are in compliance with the 2001 ROD (as the 2001 ROD was amended or modified as of March 21, 2004), except that this order will not apply to:

- A. Thinning projects in stands younger than 80 years old (emphasis added);
- B. Replacing culverts on roads that are in use and part of the road system, and removing culverts if the road is temporary or to be decommissioned;
- C. Riparian and stream improvement projects where the riparian work is riparian planting, obtaining material for placing in-stream, and road or trail decommissioning; and where the stream improvement work is the placement large wood, channel and floodplain reconstruction, or removal of channel diversions; and

D. The portions of project involving hazardous fuel treatments where prescribed fire is applied. Any portion of a hazardous fuel treatment project involving commercial logging will remain subject to the survey and management requirements except for thinning of stands younger than 80 years old under subparagraph a. of this paragraph.

I have reviewed the _____ Project in consideration of Judge Pechman's October 11, 2006 order. Because the project includes no regeneration harvest and includes thinning only in stands less than 80 years old, I have made the determination that this project meets Exemption A of the Pechman Exemptions (October 11, 2006 Order), and therefore may still proceed to be offered for sale. The first notice for sale will appear in the newspaper on (insert date if known). *{Please note: this is an example for a timber sale that meets Pechman exemption A. Modify to fit your project as necessary.}*

C. Projects that Comply With the 2001 Survey and Manage Record of Decision and Plan Amendment with Subsequent ASRs except for the Red Tree Vole.

The project is consistent with the 2001 Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines, as incorporated into the District Resource Management Plan.

This project utilizes the December 2003 species list. This list incorporates species changes and removals made as a result of the 2001, 2002, and 2003 Annual Species Reviews with the exception of the Red Tree Vole. For the red tree vole, the Ninth Circuit Court of Appeals in *KSWC et al. v. Boody et al.*, 468 F3d 549 (9th Cir. 2006) vacated the category change and removal of the red tree vole in the mesic zone, and returned the red tree vole to its status as existed in the 2001 ROD S&Gs, which makes the species Category C throughout its range. Details of the project surveys are described below:

Insert details

D. Projects Developed Under the Terms of the 2011 Consent Decree (Settlement Agreement).

In December 2009, the District Court for the Western District of Washington issued an order on partial summary judgment in favor of the Plaintiffs finding inadequacies in the NEPA analysis supporting the *Record of Decision to Remove the Survey and Manage Mitigation Measure Standards and Guidelines from Bureau of Land Management Resource Management Plans Within the Range of the Northern Spotted Owl* (BLM et al. 2007)(2007 ROD). The District Court did not issue a remedy or injunction at that time.

Plaintiffs and Defendants entered into settlement negotiations that resulted in the 2011 Survey and Manage Settlement Agreement, adopted by the District Court on July 6, 2011.

The Defendant-Intervenor subsequently appealed the 2011 Settlement Agreement to the Ninth Circuit Court of Appeals. The April 25, 2013, ruling in favor of Defendant-Intervener remanded the case back to

the District Court.

On February 18, 2014, the District Court vacated the 2007 RODs. The District Court and all parties agreed that projects begun in reliance on the Settlement Agreement should not be halted. The District Court order allowed for the Forest Service and BLM to continue developing and implementing projects that met the 2011 Settlement Agreement exemptions or species list, as long as certain criteria were met. These criteria include:

- (1) projects in which any Survey and Manage pre-disturbance survey(s) has been initiated (defined as at least one occurrence of actual in-the-field surveying undertaken according to applicable protocol) in reliance upon the Settlement Agreement on or before April 25, 2013;
- (2) projects, at any stage of project planning, in which any known site(s) (as defined by the 2001 Record of Decision) has been identified and has had known site-management recommendations for that particular species applied to the project in reliance upon the Settlement Agreement on or before April 25, 2013; and
- (3) projects, at any stage of project planning, that the Agencies designed to be consistent with one or more of the new exemptions contained in the Settlement Agreement on or before April 25, 2013.

This project is consistent with Criteria X (*1, 2, or 3 above-District to fill out*) because... *{Districts provide narrative describing rationale}*.